IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

Crl.MC.No. 1728 of 2007()

CMP.6103/2006 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA

.....

PETITIONER/COMPALINANT

HOUSING DEVELOPMENT FINANCE
CORPORATON LTD. HDFC HOUSE,
RAVIPURAM JN., M.G.ROAD,
COCHIN-15 REP: BY JUNIOR OFFICER-RECOVERY
MR.ARUN KUMAR. N.

BY ADV. SRI.P.M.KUNJIMOIDEENKUTTY
SRI.P.A.MOHAMMED ASHROF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN

RESPONDENT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1728 of 2007

Dated this the 6th day of June, 2007

ORDER

Petitioner is an incorporated person - a company registered under the Indian Companies Act. The petitioner had to figure before the Magistrate as the complainant in a complaint filed under Section 138 of the Negotiable Instruments Act. The petitioner, company being an incorporated fictitious deemed legal personality, could not in flesh and blood appear before the Magistrate. The company had to appear before the Magistrate through a representative. A counsel duly authorised by such a representative appeared and presented the complaint. By way of abundant caution, an application has also been filed to explain the reason why the person representing the company was not personally present at the time of presentation of the complaint. The learned Magistrate by the impugned order rejected the said prayer and proceeded to pass the impugned order returning the complaint. Returning the complaint is of no consolation or solace to the petitioner as that was the last date on which the complaint under Section 138 of the N.I Act must have been presented. The petitioner has rushed to this Court with the grievance that the course adopted by the learned Magistrate is incorrect. It is contrary to the principles laid down in **Rajan George v. State of Kerala** [1998(2) KLT 497], submits the learned counsel for the petitioner.

2. The representative of the complainant having filed an application to explain his absence on the date of presentation, I am certainly of the opinion that the learned Magistrate must have accepted the presentation of the complaint by the complainant as sufficient and satisfactory. The person representing the company had nothing to do on behalf of the company on that date except to present the complaint. The counsel had presented the complaint in due time before the learned Magistrate without any dispute. The learned Magistrate passed the impugned order, which I extract below:

> "Heard. It is stated in the petition that the complainant is out of station and his absence may be excused. It is not mentioned that today is the last date of filing the complaint. It is also brought to the notice of this court that the complainant used to file complaints stating that he is engaged otherwise. This is not just and proper. It is against the spirit of Section 190(ii)(a) r/w Section 200 Cr.P.C. There is no justification in receiving the complaint at the instance of the counsel and therefore this petition is dismissed and the complaint is ordered to be returned."

3. The conduct of that representative in other proceedings was certainly imported unnecessarily by the learned Magistrate while considering the present complaint. At least the learned Magistrate could have received the complaint and posted the case to any specific date for appearance of the representative of the complainant, ie. in case the learned Magistrate wanted some clarification on the affidavit filed under Section 145 of the amended N.I Act. The course adopted

by the learned Magistrate does not appear to me to be absolutely justified.

4. Return of the complaint having taken place prior to its formal reception, I am satisfied that it is not necessary to issue notice to the respondent/accused in this proceedings. He has not been made a party to this proceedings. At this stage of the proceedings, he has no right to be heard.

5. In the result, this Crl.M.C is, allowed. The impugned order is set aside. The petitioner shall re-present the complaint before the learned Magistrate within 15 days from this date. The same shall be reckoned as a valid presentation as on the earlier date and further proceedings shall be taken in accordance with law.

(R.BASANT, JUDGE)

rtr/-